

Hon. John C. Coughenour
NOTED FOR CONSIDERATION: August 23, 2013

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WENDY JENDRYSIK,

Plaintiff,

v.

RECEIVABLES PERFORMANCE
MANAGEMENT, LLC

Defendant.

Case No. 2:13-cv-00559

**DEFENDANT’S OPPOSITION TO
PLAINTIFF’S MOTION TO HAVE
FACTS DEEMED ADMITTED**

In response to Plaintiff’s Motion to Deem Allegations in Amended Complaint
Admitted, Defendant Receivables Performance Management, LLC (“RPM”) submits the
following:

I. PLEADINGS HISTORY

Plaintiff filed the instant suit on March 27, 2013.¹ RPM was served with the summons
and complaint on April 10, 2013² and filed its answer on April 30, 2013.³ RPM filed no
counterclaim. It filed no dispositive motions under Fed.R.Civ.P 12. Under the civil rules, no

¹ Dkt # 1

² Dkt # 8

³ Dkt # 9

1 response to RPM's answer was required. On May 21, 2013, without leave of court or RPM's
 2 consent, Plaintiff served an amended complaint.⁴ RPM filed its answer to the Amended
 3 Complaint on August 5, 2013 approximately 1-½ hours after Plaintiff served the instant
 4 motion.

5 **II. ARGUMENT IN OPPOSITION**

6 Fed.R.Civ.P 15(a)(1) governs pleading amendments as a matter of right. A party may
 7 amend a pleading without leave of court or a stipulation from the opposing party in two
 8 instances only – within 21 days following service of the complaint, Fed.R.Civ.P 15(A)(1)(A)
 9 or, “if the pleading is one to which a responsive pleading is required, 21 days after service of
 10 a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f),
 11 whichever is earlier.” Fed.R.Civ.P 15(a)(1)(B).

12 In this case, Fed.R.Civ.P 15(A)(1)(A) does not apply because the Amended Complaint
 13 was filed more than 21 days after service of the original complaint. Here, Plaintiff was not
 14 required to file a response to RPM's answer and affirmative defenses. Accordingly, Plaintiff
 15 had not right to file an amended complaint as a matter of course under Fed.R.Civ.P
 16 15(a)(1)(B). Instead, plaintiff could only amend her complaint if either RPM stipulated to the
 17 amendment or the court granted an order allowing the amendment. Neither event occurred
 18 here.

19 Because the proffered Amended Complaint was not permitted as a matter of right,
 20 RPM did not prepare its answer to the same until Plaintiff served discovery on Friday, August
 21 2, 2013. At that time, RPM's counsel decided to prepare an answer and affirmative defenses,
 22
 23
 24

25 ⁴ Dkt # 12

1 which contained as its first affirmative defense, the impropriety of the instant amended
2 complaint.⁵

3 Even if the court concludes that Plaintiff had the right to file her amended complaint
4 under Fed.R.Civ.P 15(A)(1)(B), RPM has now responded to the Amended Complaint. Since
5 discovery has only just begun in this case, and the case schedule only set on August 6,
6 Plaintiff has suffered no prejudice by RPM delaying its response. Conversely, granting
7 Plaintiff's Fed.R.Civ.P 8(b)(6) motion will cause RPM great prejudice, contrary to the
8 interests of justice.

9 **III. CONCLUSION**

10 RPM failed to respond to the Amended Complaint because its counsel believed that
11 the amendment was improper under his understanding of Fed.R.Civ.P 15(a)(1)(A) and (1)(B).
12 RPM has substantive and meritorious defenses to the allegations raised. Denying it the ability
13 to defend does not serve the interests of justice.

14 For the foregoing reasons, RPM urges the court to deny the instant motion.

15 Dated: August 7, 2013.

17 SIMBURG, KETTER, SHEPPARD & PURDY, LLP

19 By: /s/ Andrew D. Shafer

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⁵ Shafer Declaration ¶ 5

CERTIFICATE OF SERVICE

I hereby certify that on the date below I electronically filed the foregoing
OPPOSITION TO MOTION TO DEEM FACTS ADMITTED and the DECLARATION OF
ANDREW D. SHAFER with the Clerk of the Court using the CM/ECF system which will
send notification of such filing to the following:

Jon N. Robbins, jrobbins@AttorneysForConsumers.com
Marshall Meyers, mmeyers@attorneysforconsumers.com
Mathew J. Cunanan, matthew@dclglawyers.com

And I hereby certify that I have mailed by United States Postal Service the document to the
following non CM/ECF participants:

None.

DATED: August 6, 2013

SIMBURG, KETTER, SHEPPARD & PURDY, LLP

/s/ Brian D. Carpenter
Brian D. Carpenter,
Legal Assistant to Andrew D. Shafer